

Subpart C—Special Rules Applicable to Proceedings Under Section 602(b) of the Act

§ 821.24 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action within 60 days from the time the Administrator's action was served on petitioner. The petition shall contain a short statement of the facts on which petitioner's case depends and a statement of the requested action, and may be in letter form.

(b) *Filing petition with the Board.* The petition for review shall be filed with the Board and the date of filing shall be determined in the same manner as prescribed by § 821.7(a) for other documents.

(c) *Answer to petition.* The Administrator shall file an answer to the petition for review within 20 days of service upon him by the petitioner of the petition for review. Failure to deny the truth of any allegation or allegations of the petition may be deemed an admission of the truth of the allegation or allegations not answered.

(d) *Stay of proceeding pending request for special issuance (restricted certificate).* The Board lacks authority to review special issuances, or to direct that they be issued. Where a request for special issuance (restricted certificate) has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will hold a petition for review in abeyance pending final action by the Administrator or for 180 days from the date of the Administrator's initial certificate denial, whichever occurs first.

(e) *New evidence.* If petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, the new medical evidence must be served on the Administrator at least 30 days before the hearing. Absent good cause, failure timely to serve any new evidence will result in its exclusion from the record. The Administrator may amend his answer within 10 days

from the date the new evidence is served to respond to such new evidence.

[40 FR 30243, July 17, 1975, as amended at 43 FR 60473, Dec. 28, 1978; 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.25 Burden of proof.

In proceedings under section 602(b) of the Act, the burden of proof shall be upon the petitioner.

§ 821.26 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limitation for filing an answer, a petition for review shall be dismissed for lack of standing in either of the following instances:

(a) If the petitioner's certificate at the time of the denial or renewal thereof was under an order of suspension; or

(b) If the petitioner's certificate had been revoked within one year of the date of the denial or renewal thereof, unless the order revoking such certificate provided otherwise.

Subpart D—Special Rules Applicable to Proceedings Under Section 609 of the Act

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. The appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

(b) *Contents.* Each appeal shall contain a concise but complete statement of the facts relied on and the relief sought. It shall identify the Administrator's order and any certificate affected and shall recite the Administrator's action from which the appeal is sought. It shall also contain proof of service on the Administrator.

(c) *Effect of timely appeal with the Board.* Timely filing with the Board of an appeal from an order of the Administrator shall postpone the effective date of the order until final disposition of the appeal by the law judge or the

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Board, except in emergency proceedings.

[58 FR 11381, Feb. 25, 1993, as amended at 59 FR 59048, Nov. 15, 1994]

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The complaint shall be filed by the Administrator with the Board within 10 days after the service date of the notice of appeal.

(b) *Contents of complaint.* If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts pleaded this contention is based.

(c) *Answer to complaint.* The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him by the Administrator. Failure to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. Respondent's answer shall also include any affirmative defense that respondent intends to raise at the hearing. A respondent may amend his answer to include any affirmative defense in accordance with the requirements of § 821.12(a). In the discretion of the law judge, any affirmative defense not so pleaded may be deemed waived.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

§ 821.32 Burden of proof.

In proceedings under section 609 of the Act, the burden of proof shall be upon the Administrator.

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.

[40 FR 30243, July 17, 1975, as amended at 54 FR 12203, Mar. 24, 1989]